

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1704 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HEIRS OF KASAM UMAR

Versus

FAKIR AMNABAI ABU

Appearance:

MR SM SHAH for Petitioners

MR JR NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 23/10/97

ORAL JUDGEMENT

1. The petitioners herein are the original defendants (tenants) and the respondent herein is the original plaintiff (landlady). They are described as 'the defendants' and 'the plaintiff' respectively in this judgment. The plaintiff filed Regular Civil Suit No. 576 of 1974 in the Court of the 1st Joint Civil Judge (J.D.) at Jamnagar for obtaining possession of the suit

premises on the ground that deceased tenant Kasam Umar had taken the suit premises on a monthly rent of Rs.20/-, that the rent fell in arrears from 18/1/1969, that the plaintiff served notice demanding arrears of rent, which was due for a period of more than six months as stated above, that the plaintiff required suit premises reasonably and bonafide for her personal use and occupation and that decree should also be passed for arrears of rent and mesne profits as prayed for in the plaint. The defendant - Kasam Umar resisted the suit as per written statement exh. 10 inter-alia alleging that the plaintiff was not the owner and landlord of the suit premises, that she was not entitled to bring the suit for possession, that there was an oral understanding that the plaintiff should charge rent at the rate of Rs.15/- p.m. from 18/4/1973 and, therefore, the rent charged at the rate of Rs.20/- p.m. was excessive and not standard rent, that therefore, standard rent should be fixed, that the plaintiff did not require the suit premises for personal use and occupation and that in case decree for possession is passed, the defendant tenant would suffer greater hardship. He further contended that the rent was due on and from 18/4/1973 and, therefore, money order for the amount of Rs.180/- was sent to the plaintiff - landlady on 5/4/1974, but the same was refused and, therefore, also the plaintiff was not entitled to the decree for eviction.

2. On the aforesaid pleadings the learned trial Judge raised issues at Exh. 18 and after appreciation of the evidence placed on the record of the case, he passed decree for eviction concluding that the suit premises were let at the rate of Rs.20/- p.m., that the plaintiff was entitled to sue, that the case of the plaintiff with regard to date from which the amount of rent was due was established, that since the defendant was in arrears of rent for a period of more than six months, plaintiff would be entitled to possession of the suit premises u/S. 12(3)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'the Rent Act'), that the notice was legal and valid and that the plaintiff failed to establish the case of her personal requirement of the suit premises. Against the said judgment and decree dated 28/7/1978 the petitioners herein being the heirs of the original tenant, preferred a Regular Civil Appeal No. 83 of 1978 before the learned District Judge, Jamnagar, who by his judgment and decree dated 18/9/1980 dismissed the appeal while disallowing the time barred claim of arrears of rent. The plaintiff's cross objections were also dismissed. Feeling aggrieved with and dissatisfied by the said judgment and decree

confirming the decree for eviction the petitioners have filed the present civil revision application u/S. 29(2) of the Rent Act. The defendants thus face concurrent findings with regard to arrears of rent for a period of more than six months prior to the suit notice.

3. Short question which has been agitated before this Court is that both the Courts below have fallen in error on a substantial question of law with regard to whether section 12(3)(a) of the Rent Act or whether section 12(3)(b) of the Rent Act would be applicable to the facts of the present case. It is not in dispute that the suit notice dated 7/7/1974 exh. 25 under which the arrears of rent was claimed came to be replied as per exh. 32 dated 13/7/1974. It is not in dispute that and it cannot also be disputed that the defendants contended about the standard rent in the said reply of the notice. Besides the defendants also raised number of disputes touching the amount of rent in the said reply to the notice. Prior to the suit notice the defendant had sent money order exh. 27 for rent from 18/4/1973 to 18/4/1974 according to him and that money order was refused. There was also a dispute with regard to the date from which the rent was due. On a reference to the order passed by the learned trial Judge, it clearly appears that while fixing the standard rent of the suit premises the learned trial Judge has not granted time to the defendant - tenant to deposit the amount as per the standard rent fixed by him. Even before the learned appellate Judge this basic aspect appears to have not been noticed. This is because both the Courts below have focussed their attention only on the question that the defendant was tenant in arrears for a period of more than six months as contemplated by section 12(3)(a) of the Rent Act; whereas in fact the case apparently falls u/S. 12 (3)(b) of the Rent Act by virtue of the aforesaid disputes raised by the defendant in his reply to notice, which was quite within one month from the date of receipt of the suit notice. It might be noted that even the landlady in her oral evidence admitted that she could not say from what date the rent fell in arrears. Thus, the disputes raised in reply to the notice were obviously bonafide disputes.

4. The submission of Mr. J.R. Nanavati, learned advocate appearing for the respondent-plaintiff is that the disputes raised by the defendant-tenant in reply to the notice cannot be said to be including the dispute with regard to standard rent. According to his submission the dispute revolves round the extent of premises which was let on a particular date and reduction of rent on account of such extent of premises let to the

defendant-tenant on a particular date. Answering this submission Mr. S.M. Shah, learned advocate appearing for the petitioners-defendants has made a reference to a Bench decision of this Court rendered on 6/10/1977 in the case between Asandas Nainumal Mithaiwala v/s. Haji Gulammohmad Haji Dada, since deceased through Haji Allarakha Abdulla and 3 others as substituted trustees in Civil Revision Application No. 122 of 1972 (Coram : A.D. Desai & N.H. Bhatt, JJ. as they were then, per N.H. Bhatt, J.). In that matter the facts were : the defendant-tenant occupying the suit shop was called upon by the plaintiff-landlord by a notice Exh. 17 dated 2/9/69 to pay up the arrears of rent from 1/2/69 to the end of August 1969 i.e. for seven months. The rate of rent demanded from the tenant was Rs.55/- per month, which was the amount fixed by consent in the earlier litigation between the parties as evidenced by the consent decree Exh. 16 on the record. By his reply Exh.19 the defendant-tenant urged that the rent of Rs.55/- fixed in the earlier litigation was subject to the landlord's promise to supply a separate pipe line for water to the tenant from the landlord's well and at the landlord's costs."

Considering nature of this dispute raised in the reply to the notice the Bench held that in order to call a dispute as a dispute about standard rent no fixed terminology is laid down by law and nor any such rigid terms are fixed by the standards of common sense as ones to be insisted upon and that if from the overall appreciation of the claims and contentions put forth by the contending parties, it would appear that the rate demanded was challenged, it has to be assumed that there is a dispute about the standard rent. In my opinion, the aforesaid ratio of the Division Bench decision would squarely apply to the facts of the present case as noticed hereinabove. It has to be seen what is the nature of dispute in substance raised in reply to the notice. In my opinion, the nature of dispute which has been raised in reply to the notice in substance is nothing but the dispute of standard rent. This would be borne out by the fact that both the Courts below have treated the dispute as one of standard rent. In that view of the matter the case before the learned Judges apparently fell u/S. 12 (3)(b) of the Rent Act. Examining the position with regard to whether the defendants complied with the said provision it would appear that the defendants in fact complied with the requirement of the said provision. Such examination was made before this Court itself by scrutinising the receipts of deposits made before the trial Court in R.C.S. No. 576 of 1974. Accordingly the

defendants-tenant deposited inall Rs. 2903.75 as against the actual amount that was due on the date of the appellate Court's judgment, namely Rs.2800/-.

Plaintiff will be at liberty to withdraw the deposited amount and appropriate the same to the claim of rent and mesne profits including time barred claim.

5. In the result, this revision application deserves to be allowed. Decree for eviction passed by the trial Court and confirmed by the appellate Court is hereby set aside. Rule made absolute to this extent with no order as to cost.

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